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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,182	12/01/2003	Marina Azizova	70-098	2040

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EXAMINER	
VENKAT, JYOTHSNA A	
ART UNIT	**PAPER NUMBER**
1615	

MAIL DATE	DELIVERY MODE
07/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/725,182	AZIZOVA ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A. VENKAT Ph. D	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *8-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of election filed on 5/10/07. Claims 1-11 are pending in the application and the status of the application is as follows:

Election/Restrictions

Applicant's election of group I in the reply filed on 5/10/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/10/07.

Claims 1-7 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 4 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **This is written description**.

This is a "written description" rejection, rather than an enablement rejection under 35 U.S.C. 112, first paragraph. *Vas-Cath Inc. V. Mahurka*, 19 USPQ2d 1111, states that applicant

must convey with reasonable clarity to those skilled in the art that, as of the filing date sought; he or she was in possession of the invention. The invention, for purposes of the " written description" inquiry, is "*whatever is now claimed*" (see page 1117).

The description requirement of the patent statue requires a description of an invention, not an indication of a result that one might achieve if one made that invention. See *In re Wilder*, 736 F.2d 1516, 1521, 222 USPQ 369, 372-73 (Fed. Cir. 1984). Applicant fails to adequately describe, " hair styling polymer, wherein the hair styling polymer is vinylpyrrolidone polymer and the vinyl pyrrolidone polymer is a vinylpyrrolidone terpolymer". A terpolymer is formed from three different monomers. The specification describes one monomer belonging to terpolymer. This monomer is vinylpyrrolidone monomer. Specification also does not describe vinylpyrrolidone polymer. Are these polymers homopolymers or copolymers? Specification does not describe or exemplify one species belonging to this polymer.

The disclosure of a single disclosed species may provide an adequate written description of a genus when the species disclosed is representative of the genus. However, the present claim encompasses numerous species that are not further described. One of skill in the art would not recognize from the disclosure that the applicant was in possession of the genus drawn to " hair styling polymers, where in the hair styling polymer is vinyl pyrrolidone polymer or vinyl pyrrolidone terpolymer".

The description requirement of the patent statue requires a description of an invention, not an indication of a result that one might achieve if one made that invention. See *In re Wilder* 736 F.2d 1516, 1521, 222 USPQ 369, 372-373 (Fed. Cir. 1984). Accordingly, it is deemed that the specification fails to provide adequate written description for the genus " vinyl pyrrolidone

polymers" or vinyl pyrrolidone terpolymer and does not reasonably convey to one skilled in the relevant art the inventor(s), at the time the application was filed has possession of the entire scope of the invention drawn to " vinyl pyrrolidone polymers" or "vinyl pyrrolidone terpolymer".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term " unusual " in claim 1 lacks clarity. Deletion of the term " possessing unusual viscoelastic properties" is suggested to overcome the above rejection.

Claims 4 would better read by deleting " comprises " and inserting " is".

Claims 5-7 would better read by deleting " further defined as comprising"

The terms " vinylpyrrolidone polymers " is without metes and bounds. Recourse to the specification does not define the scope of this expression.

The expression " vinyl pyrrolidone terpolymer" does not particularly point out and distinctly claim the subject matter which applicant regards as the invention. What are the other two monomers that form the terpolymer?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patent 6,297, 203 ('2030 and AKZO NOBEL Technical Bulletin 3/2002).

Patent '203 teaches hair styling compositions. See the abstract, see col.5, lines 53-54 for the preferred zwittreionic surfacatant, which is claimed Cocoamidopropyl betaine, see col.1, lines 60-65 for the concentration of the surfacatant, see col.8, ll 35 through col.9, lines 17 for the hair styling polymers, see col.9, lines 30-35 for claimed perfumes and preservatives. Patent at col.9, lines 46-60 suggests adding thickening agent. See also examples, for the claimed ingredient B, hair styling polymer Luviquat, fragrance and thickeners. The difference between the patent and the instant application is patent does not teach ingredient (A) claimed and also hydrogen peroxide. However the technical bulletin specifically teaches (A) along with hydrogen peroxide. See page 1, wherein the bulletin teaches ingredient A as a thickener in hair care formulations and teaches that this ingredient provides conditioning properties. The bulletin also teaches that the thickening effect can be boosted by adding synergist like perfume oils. See page 2, for the combination of ingredient A and hydrogen peroxide.

Accordingly, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of patent '203 and add the ingredient A and hydrogen peroxide expecting beneficial effect to hair. One of ordinary skill in the art would be motivated to add the ingredient A and hydrogen peroxide with the reasonable expectation of success that the ingredient A is a thickener which provides clear solutions and also provide conditioning properties to the compositions, which is beneficial to the consumer. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615

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